

## State of New Hampshire

### PUBLIC EMPLOYEE LABOR RELATIONS BOARD

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Seacoast Educational Association and Seacoast  
Educational Support Personnel Association,  
NEA-NH

Complainants

v.

School Administrative Unit No. 21 School Boards

Respondent

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Case No's. T-0340-5  
T-0257-7

Decision No. 2001-057

(Declaratory Judgment)

### APPEARANCES

Representing Seacoast Educational Association and Seacoast  
Educational Support Personnel Association, NEA-New Hampshire:

James Allmendinger, Esq., Counsel

Representing School Administrative Unit No. 21, School Boards:

Robert A. Cassassa, Esq., Counsel

### BACKGROUND

This case resulted from a Petition for Declaratory Ruling filed by the parties as joint petitioners, on May 18, 2001 pursuant to Rule PUB 206.01. Following a Pre-hearing Memorandum and Order, dated June 7, 2001 and designated Decision No. 2001-051, the contents of which are incorporated here by reference, the parties made oral arguments to the PELRB on July 17, 2001. As noted in the Pre-hearing Memorandum and Order, the parties waived the presentation of any witnesses and pre-attached all exhibits, numbered 1 through 11, inclusive to their joint petition.

### FINDINGS OF FACT

1. The parties have stipulated and presented 13 different factual considerations or circumstances pertaining to the issue(s) they seek this board to address, to wit:
  - a. The Seacoast Educational Association, NEA-NH (SEA) has been certified as the exclusive representative of all professional employees for the purpose of collective negotiations with the SAU #21 Boards.... The SEA certification is a "grandfathered" certification [pursuant to] SEA v. PELRB, 116 NH 653 (1976).
  - b. The Seacoast Educational Support Personnel Association, NEA-NH (SESPA) was certified as the exclusive representative of educational support personnel for the purpose of collective negotiations with the SAU #21 Boards by the PELRB on June 22, 1982.
  - c. SAU #21 Boards include the Hampton School Board, the Hampton Falls School Board, the North Hampton School Board, the Seabrook School Board, the South Hampton School Board, and the Winnacunnet Cooperative School Board.
  - d. The current agreement between the SEA and SAU #21 Boards expires June 30, 2001.
  - e. The current agreement between the SESPAs and SAU #21 Boards expires June 30, 2001.
  - f. SEA and SAU #21 Boards began negotiating a successor contract in the Fall of 2000.
  - g. SEA and SAU #21 Boards negotiating teams reached an agreement on a successor contract. The SEA membership subsequently ratified the proposed successor contract.... All of the individual School Boards comprising the SAU #21 Boards subsequently ratified the proposed successor contract.
  - h. SESPAs and SAU #21 Boards negotiating teams reached an agreement on a successor contract. The SESPAs membership subsequently ratified the proposed successor contract. All of the individual School Boards comprising the SAU #21 Boards subsequently ratified the proposed successor contract.

- i. The individual School Boards comprising the SAU #21 Boards submitted the cost items for the proposed successor SEA and SESPAs contracts to their respective annual School District Meetings for approval. [This approval would have been pursuant to] RSA 273-A:3 (II)(b) [and the] Warrants of the Hampton School District, Hampton Falls School District, North Hampton School District, Seabrook School District, South Hampton School District, and Winnacunnet Cooperative School District.
- j. All of the individual School Districts within SAU #21 except the Seabrook School District, approved the proposed successor SEA and SESPAs contracts at their respective Annual District Meetings. The Hampton School District approved the proposed SEA contract by a vote of 1,268 to 1,137 and the proposed SESPAs contract by a vote of 1,335 to 1,057. The Hampton Falls School District passed the proposed SEA contract by a vote of 446 to 340 and the proposed SESPAs contract by a vote of 473 to 307. The North Hampton School District voted in favor of the proposed SEA contract 646 to 266 and in favor of the proposed SESPAs contract 660 to 243. The South Hampton School District approved the proposed SEA contract and proposed SESPAs contract by unanimous hand votes. The Winnacunnet Cooperative School District passed the proposed SEA contract by a vote of 2,751 to 2,503 and the proposed SESPAs contract by a vote of 2,913 to 2,315. The Seabrook School District failed to approve the proposed SEA contract as 527 voted in favor of the contract and 726 voted against and failed to approve the proposed SESPAs contract with 585 in favor and 694 opposed.
- k. Counsel for the SAU #21 Boards, SEA and SESPAs are not aware of any previous occasion when a proposed SEA or SESPAs contract has failed to be approved by all of the individual School Districts within SAU #21.
- l. When SEA and the SAU #21 Boards negotiated their July 1, 1995 to June 30, 1998 agreement, the contract was expressly subject to "funding of cost items by all Districts."
- m. While the SAU #21 Boards have negotiated collectively with SEA and SESPAs since 1976 and 1982 respectively, the individual School Districts contract with their own professional employees (e.g. teachers) and support personnel. The taxpayers in the individual School Districts pay for the teachers and support personnel working in their respective School Districts (e.g. Hampton taxpayers pay for teachers and support personnel employed by the Hampton School District, North Hampton taxpayers pay for teachers and support personnel employed by the North Hampton School District, etc.)

2. It is undisputed that all six component elements<sup>1</sup> (Finding No. 1-c) of the SAU #21 School Boards have traditionally and historically ratified and approved the necessary funding requirements through their respective legislative bodies in compliance with RSA 273-A:3 II (b). In the case of the Seacoast Education Association, NEA-NH (SEA), this has continued since the inception of RSA 273-A, through the Association's "grandfathered" certification dated December 7, 1976 (Joint Exhibit Tab 1) and the then existing CBA for the period February 18, 1973 to June 30, 1996 (Joint Exhibit Tab 2). In the case of the Seacoast Educational Support Personnel Association (SESPA), bargaining has continued since 1985, after the New Hampshire Supreme Court approved a unified bargaining unit consisting of all the member school districts of the SAU. 126 N.H. 95 (1985). (Joint Exhibit Tab 5.)
3. The current SESPAs collective bargaining agreement is for the period July 1, 1998 to June 30, 2001 (Joint Exhibit Tab 4). Article II-A of that agreement is entitled "Negotiations Procedure" and provides:

Not later than October 1<sup>st</sup>, the *parties* agree to enter into negotiations accordance with RSA 273-A in a good-faith effort to reach agreement on all matters concerning salaries, fringe benefits and working conditions. Any agreement reached shall be reduced to writing and signed by the *representatives of the SAU #21 School Boards and Association*. (Emphasis added.)

The parties to this document are the "Seacoast Educational Support Personnel Association" and the "SAU #21 School Boards."

4. The current SEA contract is for the period July 1, 1998 to June 30, 2001 (Joint Exhibit Tab 6). Article II of this document is entitled "Negotiations Procedure" and provides:

Not later than September 1<sup>st</sup>, the parties agree to enter into negotiations, in accordance with the procedures set forth herein, in a good-faith effort to reach agreement on all matters raised by either party concerning salaries, fringe benefits and other areas covered by this Agreement. Any agreement reached shall be reduced to writing and signed by the Board and the Association. Any agreement reached which requires the expenditure of public funds for its implementation shall not be binding upon the Board, unless and until the necessary appropriations have been made by the voters. The Board shall make a effort to secure the funds necessary to implement said agreements. If such funds are not forthcoming, the Board and the Association shall resume negotiations regarding the matters affected thereby, in accordance with the provisions of this Agreement.

The parties to this document are the "Seacoast Education Association" and the "School Administrative Unit #21 School Boards."

<sup>1</sup> Also known as "constituent school districts" in RSA 194-C:9.

5. Despite the unanimous actions taken by the six member school boards (Finding Nos. 1-g and 1-h) and the 5 approvals and 1 rejection by the six legislative bodies, the parties have not implemented the provisions of either the SEA or SESPAs successor collective bargaining agreements.
6. All employees covered by each of the CBA's are covered by one recognition clause in each of those documents. The CBA's do not delineate between employees of different member school districts in the language of their respective recognition clauses.
7. Persons covered by the CBA's, whether they be professional employees or support staff, remain the employees of the district through which and by which they were initially employed. In the case of those employees who require nomination, appointment or actual hiring by the SAU superintendent, the vacancy is posted by the hiring district, interviews are conducted, the local school board reviews and votes on the candidate, after which the local school district sends the necessary documents to the superintendent to formalize the appointment and hiring process.

### DECISION

In the general scheme of both the educational budgeting statute, RSA 194-C pertaining to SAU's, and the public sector bargaining statute found at RSA 273-A, there is a contemplation that voters shall have a role in approving expenditures and raising the funds to pay those expenditures. RSA 194-C:9 is insightful with respect to what is required of each participating school district in a SAU, namely, that "each district within a school administrative unit shall raise at the next annual district meeting the sum of money apportioned to it by the school administrative unit board for the expenses of services which each district received" from the SAU central office. RSA 273-A:3 II (b) is even more specific:

Only cost items shall be submitted to the legislative body of the public employee for approval. If the legislative body <sup>2</sup> rejects any part of the submission, or while accepting the submission takes any action which would result in a modification of the terms of the cost item submitted to it, either party may reopen negotiations on all or part of the entire agreement.

The two foregoing statutes provide responsibilities, in the context of the SAU office budget, for "each district within a school administrative unit" and for "either party" who may reopen negotiations upon the happening of certain conditions precedent. Once such condition occurred here in the form of the rejection of the warrant articles by Seabrook voters for both the

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<sup>2</sup> The "legislative body" approval process is synonymous with the annual "school district meeting" for purposes of this proceeding.

SEA and SESPAs agreements. Our assessment of what happened is complicated, however, by the fact that one of the "either parties" consists of six separate constituent school districts.

When we turn our attention to whether the rejection of the warrant articles may be by only one constituent school district or if it must be by a majority of the constituent districts, by weighted voting or otherwise, we find three compelling observations for the former over the latter.

First, in the case at hand as well as historically, the six separate warrant articles (Joint Exhibit Tab 9) call for the expenditure of six different amounts of money from six different school districts. Each prospective voter was charged with voting to approve or disapprove only expenditures to be raised and paid by his or her individual community. Voters were not called upon to vote on expenditures for the SAU as a whole, but only for what the cost would be for the community served by their respective school districts. Once the votes were tallied in each district, that district's vote, for or against the contract package, was entered as an approval or rejection, whether the proposition carried by hundreds of votes or failed by a handful of votes. This gives every appearance of being six separate district meeting votes, not a united SAU vote.

This brings us to our second observation which is based on the practice of the parties, described to us as being undisturbed since before 1976 in the case of SEA and since 1982 in the case of SESPAs (Finding Nos. 1-a and 1-b). Stated one way, the six separate component or constituent school districts have never before failed to approve CBAs by a majority vote in each of the respective district meetings. Stated another, never before, according to the record before us, have the parties used weighted voting, total votes cast or any other technique to pool all votes cast and to determine the outcome by a majority of that pool. They have historically relied on a district-by-district tally. While this appears to be consistent with what is contemplated by statute, it also appears to have established the voting expectations of the parties, namely, that each component unit must approve their respective warrant article(s) by a majority and that majority, be it wide or slim, controls the district's vote to accept or reject the overall CBA package(s). There is no history of any attempts to modify or deviate from this voting process.

Finally, following the notion of the voting expectations of the parties, we turn to our third observation which is a manifestation of those expectations, at least in the case of the SEA contract. Article II of the now-expired CBA for SEA is recited, in pertinent part, at Finding No. 4 and specifically provides that any agreement requiring funding for implementation "shall not be binding...until the necessary appropriations have been made by the voters." It also provides that "if such funds are not forthcoming, the Board and the Association shall resume negotiations regarding the matters affected thereby." Thus, in the case of the SEA, no deal is a deal until it is funded. The parties have contractually agreed that lack of funding puts them back at the bargaining table. To come full circle, "no deal" is affirmed by the manner in which the parties have counted their votes, district-by-district and not voter-by-voter.

In the case of SESPAs, its now-expired contract has no such language as appeared in SEA Article II. The old SESPAs agreement (Finding No. 3) provided that the "parties" agreed to "enter into negotiations...in a good-faith effort." In that situation, SAU #21 was one party and SESPAs was the other. In negotiating the contract, the SAU was discharging its duties under

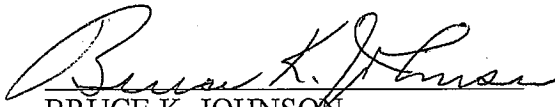
RSA 194-C:4 (b). By engaging in these negotiations, the SAU was not, however, discharging the approval and funding authority left to the voters. Just as was the case with SEA negotiators, the SESPAs negotiators were aware of the way in which funding votes had been counted in the past and made no effort to modify or amend that procedure for the 2001 district meeting cycle. The unsuccessful outcome of the traditional district-by-district tally means that SESPAs did not achieve funding approval for a new successor agreement.

Under the particular circumstances of this case, we find that the action of the voters with respect to both the SEA and SESPAs contract packages caused them to fail for lack of funding, even though other counting procedures or gross numbers may have pointed to a different outcome. Without having these two contracts finalized by the requisite funding authority from the voters, the parties, or either of them, may invoke reopener negotiations under RSA 273-A:3.

Given the nature of these proceedings, no remedy is directed.

So ordered.

Signed this 2nd day of August, 2001.

  
BRUCE K. JOHNSON  
Alternate Chairman

By unanimous decision. Alternate Chairman Bruce K. Johnson presiding. Members Richard Roulx and Richard Molan present and voting.